IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO.4693 OF 2007

Sarla Performance Fibers Limited & Anr..Petitioners

Vs.

The Union of India & Ors.....Respondents

Mr.R.A. Dada, Senior Counsel with Mr. Prakash Shah for P.D.S. Legal for the Petitioners.
Mr. A.S. Rao with Mr. Y.S. Bhate for the respondents.

CORAM : F.I. REBELLO &

R.V. MORE,JJ.

DATED : 4TH JULY, 2007

P.C.

. Rule. Heard forthwith. The petitioners have what is described as Unit No.1, licensed under Section 58 of the Customs Act as private bounded warehouses vide the License dated October, 18, 1994. The respondents, it appears, cancelled the said license, pursuant to which the petitioners herein had approached this Court and filed a Writ Petition being Writ Petition No.60 of 2005. The petition was admitted. Interim relief was granted as set out in para.3 of the order. Para.3(d) of the said order reads as under:-

> "d) the petitioner shall not store any of the imported polyester or other material except in the petitioners premises and at no other warehouse or

places."

For the purpose of their business the petitioners herein applied for additional location for the purpose of storing their goods. This application came to be rejected by order dated 13th June, 2007. The respondent No.3 while passing the order placed reliance on the order of this Court more specifically para.3(d) which has been reproduced above and then proceeded to hold as under:-

> "The Central Excise Authority further expressed that the position at the time of the High Court's order, should be maintained in all respects including that of bounded/licensed premises. Therefore, Central Excise Department has given the recommendation not to permit for inclusion of any additional location in the existing premises of the EOU in the light of High Court's order dated 5.5.2005."

. The issue before us is whether this order of 13th June, 2007 can be sustained. By the conditions imposed by this Court the petitioners have been prevented from storing goods and material other than in premises belonging to them in the location. In these circumstances if the petitioners require additional premises and additional location and if the same can be granted, the order of this Court would not stand in the way of the respondents considering the application. Merely because the petition is pending will be no reason not to consider the said application as any grant

of permission can always be subject to final order that will be passed in the said petition. The reason, therefore, given for rejecting the application in our opinion is really extraneous for consideration of the application.

. In the light of that the impugned notice dated 13th June, 2007 is quashed and set aside. The matter is remanded back to the respondent No.3 to reconsider the said application and dispose it of according to law at any rate before 6th August, 2007 without taking into consideration the direction issued by this Court in its earlier order in Writ Petition No.60 of 2007. It will be open to the Commissioner, the Respondent No.2, to grant permission subject to the order that may to be passed in Writ Petition No.60 of 2007.

(**F.I. REBELLO**, J)

(**R.V. MORE, J)**